

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROGER P. HOFFMAN

Appeal No. 2006-0116
Application No. 09/632,140

MAILED

NOV 23 2005

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

ON BRIEF

Before KIMLIN, WARREN, and TIMM, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1-4.

Claim 1 is illustrative:

1. A laminated beverage carrier for beverage containers comprising a laminated composite sheet folded and secured in the configuration of a box, said sheet comprising a non-corrugated base layer of unbleached cellulosic fibers and having an inner surface and an outer surface, an outer layer of separately formed non-corrugated paper having an inner surface and an outer surface, printed graphics disposed on the outer surface of the outer layer, and adhesive disposed between the inner surface of the outer layer and the outer surface of the base layer and serving to bond the outer layer to said base layer, the inner surface of said outer layer being bonded continuously to the outer surface of said base layer.

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The examiner relies upon the following references as evidence of obviousness:

Arneson	4,128,169	Dec. 5, 1978
Cooper	5,002,186	Mar. 26, 1991
Merdem et al. (Merdem)	5,057,359	Oct. 15, 1991

Appellant's claimed invention is directed to a box made from laminated composite sheet material comprising a base layer of unbleached cellulosic fibers and an outer layer of non-corrugated paper having printed graphics disposed on its outer surface. The outer layer of paper is bonded to the outer surface of the base layer. The box finds utility as a carrier for beverage containers.

Appealed claims 1-4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Merdem in view of Cooper and Arneson.

We have thoroughly reviewed the respective positions advanced by appellant and the examiner. In so doing, we find ourselves in agreement with appellant that the examiner has failed to establish a prima facie case of obviousness for the claimed subject matter. Accordingly, we will not sustain the examiner's rejection.

The flaw in the examiner's reasoning supporting the rejection is the description of greaseproof paper layer 2 of

Merdem as an outer layer which corresponds to the outer paper layer of the claimed invention. As pointed out by appellant, Merdem, at column 2, lines 11 et seq., describes greaseproof paper layer 2 as facing inwards, whereas paperboard layer 1 faces outwards. Hence, greaseproof paper layer 2 of the reference, having a polyethylene coating 5, forms the interior of the container. The examiner, notwithstanding the relevant disclosure in Merdem, maintains that paper layer 2 of the reference "is an outer layer as it is outside of the inner surface (the surface of the polyethylene layer '5' in the Figure" (page 6 of answer, third paragraph). However, although paper layer 2 of Merdem is positioned outside relative to polyethylene layer 5, the composite of Merdem does not meet the claim requirement of an "adhesive disposed between the inner surface of the outer layer and the outer surface of the base layer and serving to bond the outer layer to said base layer" (claim 1). In other words, paper layer 2 of Merdem does not have its inner surface, i.e., the surface bonded to polyethylene layer 5, bonded to the outer surface of base, paper board layer 1. Consequently, the container of Merdem, formed by folding the composite in the manner described by the reference, does not have the juxtaposition of layers defined by the box of the claimed

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invention. The examiner has presented no rationale why it would have been obvious for one of ordinary skill in the art to modify the container of Merdem to conform to the configuration of the claimed box, and the "secondary" references of Cooper and Arneson do not remedy the basic deficiency of Merdem.

In conclusion, based on the foregoing, we are constrained to reverse the examiner's rejection.

REVERSED

Edward C. Kimlin
EDWARD C. KIMLIN)
Administrative Patent Judge)
)

Charles F. Warren
CHARLES F. WARREN)
Administrative Patent Judge)
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Catherine Timm
CATHERINE TIMM)
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